

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

## **Advice Memorandum**

DATE: April 26, 1996

TO : Michael Dunn, Regional Director  
Region 16

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: Titus Electrical Contracting, Inc.  
Case 16-CA-17527

This case was submitted for advice on whether a single employee's economic strike constituted "concerted" activity.

Employee Lockwood is a Union organizer hired by the Employer as one of two jobsite electricians. In the morning of Lockwood's first day on the job, he asked the site supervisor for a raise for himself and the other employee, Camargo. The supervisor replied that he couldn't provide a raise. At the start of the next workday, Lockwood gave the supervisor his Union Organizer card and repeated that he and Camargo needed a raise. The supervisor replied that Lockwood would have to call the Employer directly for a raise. Lockwood told the supervisor to tell the Employer that the employees needed a raise or they may go out on strike. It appears that during this exchange, Camargo was present but silent.

Later that day during the employees' break time, Lockwood asked Camargo to go out on strike. Camargo stated that the next morning he planned to go look for another job because he needed more money. Lockwood responded that he wouldn't work either and they would both just go on strike. Camargo declined and repeated that he was just going to look for another job.

The next morning, Lockwood told the supervisor that Camargo was looking for another job because he needed more money, and that Lockwood also needed more money or he was going to go out on strike. Later that day, when the supervisor asked Lockwood if he could work late, Lockwood responded, "Maybe, if I don't go on strike." The supervisor later told Lockwood that if he would be quiet and help finish the job, the supervisor would get Lockwood a raise. Lockwood replied that when Camargo finally arrived, Lockwood was going on strike unless the supervisor

called the Employer to get Lockwood more money. When the supervisor declined, Lockwood answered that when Camargo arrived, "I am going to go on strike." The supervisor was off-site when Camargo finally arrived. Lockwood told Camargo to tell the supervisor that Lockwood had left on strike. Lockwood left and when the supervisor returned, Camargo told him that Lockwood had left on strike.

The Employer discharged Lockwood listing three written reasons: walking off the job; telling Camargo that Lockwood was not working due to sub-standard wages; and trying to solicit Camargo to quit and join the Union. The Region has been unable to contact Camargo for affidavit evidence.

[FOIA Exemption 7(D) \_\_\_\_\_,] however, Camargo expressly declined to go out on strike with Lockwood.

We conclude, in agreement with the Region, that Lockwood was not engaged in concerted activity under Meyers<sup>1</sup> when he engaged in a strike for more money for himself.<sup>2</sup>

The Board has held that in order for activity to be concerted, it must be "engaged in with or on the authority of other employees and not solely by and on behalf of the employee himself..."<sup>3</sup> The Board thereby overruled Alleluia Cushion Co., 221 NLRB 999 (1975) and its progeny which held that the individual assertion of a matter "of common concern" to other employees was concerted activity.

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<sup>1</sup> Meyers Industries, Inc. (Meyers I), 268 NLRB 493 (1984) reaffirmed in Meyers II, 281 NLRB 882 (1986).

<sup>2</sup> We note, however, that the Employer gave three bases for Lockwood's discharge. Since the other two bases involved talking to Camargo about working conditions, which constituted protected concerted activity, this case presents a "mixed motive" analysis. The Region thus may issue complaint, independent of the Meyers/Alleluia analysis herein, if the Employer cannot establish that it would have discharged Lockwood solely because of the first, arguably unconcerted basis, i.e., because he individually walked off the job.

<sup>3</sup> Meyers (I), supra, 268 NLRB 497.

In Steere Dairy Inc., 237 NLRB 1350 (1978), three employees agreed that employee Watkins should protest a pay cut to the employer on behalf of the employees. When Watkins told the employer that the employees were upset, the employer replied that they could get out. The three employees then discussed striking but only Watkins decided to go out on strike. When the employer asked the remaining employees about Watkins' absence, they replied that he was on strike, and had tried to get them to also strike, but they had refused. When Watkins unconditionally offered to return, the employer discharged him because he had tried to talk the other employees into "quitting" their jobs and he had walked off the job.

The ALJ, adopted by the Board, found the discharge unlawful. The ALJ first found that Watkins' talking to the other employees about striking was protected concerted activity. The ALJ then found that Watkins' individual strike was concerted activity only because, under Alleluia Cushion, it was impliedly concerted because Watkins had struck over a common term and condition of employment.

We conclude, in agreement with the Region, that there is insufficient evidence that Lockwood went out on a strike acting in concert on the authority of fellow employee Camargo. It seems clear that Camargo agreed with Lockwood's goal of needing more money. However, the evidence does not establish that Camargo shared Lockwood's belief that going out on strike was the proper approach for obtaining a raise. To the contrary, it appears that Camargo believed, and acted upon the belief, that the proper approach for obtaining more money was not to strike but to find another job.

We recognize that at the start of Lockwood's second workday, Lockwood told the supervisor to tell the Employer that the employees needed a raise or "we" may go out on strike, and Camargo remained silent. However, Camargo thereafter explicitly told Lockwood that Camargo would not be going out on strike. Lockwood then went out on strike alone stating that "I am going to go on strike." Finally, there is no evidence that the Employer believed that Lockwood may have been striking on the authority of Camargo. The Employer instead apparently believed that

Lockwood had unsuccessfully attempted to enlist Camargo's support in the strike.<sup>4</sup>

We conclude that the rationale of Steere Dairy essentially controls this case, i.e., that Lockwood's solo strike is concerted only under the principles of Alleluia Cushion.<sup>5</sup> We therefore authorize the Region to issue complaint in order to let the Board reconsider whether it should return to the Alleluia Cushion line of cases.<sup>6</sup>

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<sup>4</sup> We also conclude that Lockwood was not striking on behalf of the Union. Although Lockwood early identified himself to the Employer as a Union Organizer, there is insufficient evidence to establish that he thereafter struck on behalf of the Union with an organizational or recognitional object. Rather, as noted above, Lockwood went out on a solo strike, seeking a wage raise for himself, without the support of fellow employee Camargo, and without any accompanying handbills or picket signs indicating a union sponsored strike.

<sup>5</sup> We would not distinguish Steere Dairy merely because in that case the employees affirmatively told the employer that they had decided not to strike, while here Camargo remained silent in the Employer's presence when Lockwood initially threatened to strike. As noted above, Camargo later expressly told Lockwood that he would not go out on strike for more money, and then confirmed his intention by seeking another job. We also note that Lockwood's strike was not an unprotected work stoppage under Section 8(g). See Painters Local 452 (Henry C. Beck Co.), 246 NLRB 970 (1979).

<sup>6</sup> [FOIA Exemptions 2 and 5